

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

Phillip Rael and
Anna Rael,

Debtor.

No. 17-12289-j7

**MOTION FOR RELIEF FROM
AUTOMATIC STAY**

TD Auto Finance LLC, a creditor herein, hereby moves that this court enter an Order granting it Relief from the Automatic Stay imposed by 11 U.S.C. § 362(a) to permit it to exercise its rights under a Retail Installment Sale Contract entered into with the debtor (“debtor” means Phillip Rael and Anna Rael whether singular or plural) and to obtain possession of the subject property. The bases of TD Auto Finance LLC's Motion are set forth in the memorandum attached hereto.

DATED this 12th day of October, 2017.

Ball, Santin & McLeran, PLC

By/s/ James E. Shively #9497

James E. Shively
2999 N. 44th Street, Suite 500
Phoenix, Arizona 85018
Attorney for TD Auto Finance LLC

MEMORANDUM

1. On September 5, 2017, debtor commenced the above-captioned Chapter 7 case. Yvette J. Gonzales was appointed trustee of the debtor's bankruptcy estate.

2. Debtor is presently obligated to TD Auto Finance LLC in the amount of \$69,273.69 ("the debt"). The debt is secured by a valid and first priority security interest in following described property:

2016 Chevrolet Silverado 1500

VIN # 3GCUKREC8GG255102

("the collateral"). The debt and the lien securing the debt are evidenced by a Retail Installment Sale Contract executed by debtor on September 20, 2016, and the certificate of title, copies of which are attached as Exhibits "A" and "B" and incorporated herein by reference.

3. The debtor has been in default to TD Auto Finance LLC on this loan since November 5, 2016.

4. The value of the collateral is \$35,032.00, according to a NADA Valuation Report. Therefore, the value of the collateral, less the amount of the debtor's exemption in the collateral, is not sufficient to satisfy the encumbrances against the collateral, accordingly, there is no equity in the collateral for the debtor's estate. In addition, the value of the collateral is such that there is little, if any, equity for the debtor. Accordingly, TD Auto Finance LLC submits that the collateral is not necessary for an effective reorganization. Accordingly, TD Auto Finance LLC is entitled to stay relief pursuant to 11 U.S.C. Section 362(d)(2).

5. TD Auto Finance LLC's interest in the collateral is not adequately protected. The debtor has failed to provide adequate protection for TD Auto Finance LLC's interest by making adequate protection payments or otherwise. The value of the collateral is decreasing while the debt to TD Auto Finance LLC is increasing. Therefore, TD Auto Finance LLC is entitled to stay relief pursuant to 11 U.S.C. Section 362(d)(1).

6. TD Auto Finance LLC requests that the court enter an order relieving it from the automatic stay of 11 U.S.C. Section 362(a) as to the debtor, the collateral, and the bankruptcy estate, with respect to the collateral, and to allow TD Auto Finance LLC to exercise its rights of lien enforcement, and to obtain possession of the collateral.

7. TD Auto Finance LLC further requests that the court allow TD Auto Finance LLC to file an amended proof of claim for any deficiency balance within 30 days of disposition of the collateral or by the claims bar date, whichever is later.

8. We have been unable to ascertain whether debtor will contest the requested relief. There has been no reply to the correspondence alerting debtor's counsel to the default that was mailed to debtor's counsel on September 26, 2017. A copy of the correspondence is attached as Exhibit "C".

DATED this 12th day of October, 2017.

Ball, Santin & McLeran, PLC

By/s/ James E. Shively #9497
James E. Shively
2999 N. 44th Street, Suite 500
Phoenix, Arizona 85018
Attorney for TD Auto Finance LLC

FILED this 12th day of October, 2017.
COPIES of the foregoing mailed
The 13th day of October, 2017, to:

Phillip Rael and
Anna Rael
7 Pony Express
Edgewood, NM 87015
Debtor

Yvette J. Gonzales, Trustee
P.O. Box 1037
Placitas, NM 87043

/s/ Erin O'Brien